

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

DATE: **MAR 12 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). It is now on appeal before the Acting Chief, Administrative Appeals Office (AAO). The appeal will be sustained, and the petition approved.

The petitioner is a cable television network programming business. It seeks to permanently employ the beneficiary in the United States as "manager, accounting and tax" pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an Application for Permanent Employment Certification, ETA Form 9089, certified by the United States Department of Labor (DOL).

The Director denied the petition on December 14, 2009, on the ground that the record failed to establish that the beneficiary had five years of qualifying post-baccalaureate experience, as required in the regulation at 8 C.F.R. § 204.5(k)(2) to be eligible for classification as an advanced degree professional.

The petitioner filed a timely appeal. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(2) of the Act provides for the granting of preference classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. See *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The petitioner must also establish its continuing ability to pay the proffered wage to the beneficiary from the priority date up to the present. See 8 C.F.R. § 204.5(g)(2). The priority date of the instant petition is October 22, 2008, which is the date the underlying labor certification was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d). The Immigrant Petition for Alien Worker (Form I-140) was filed on August 21, 2009.

Upon review of the entire record, the AAO concludes that the petitioner has established that the beneficiary more likely than not had all the education, training, and experience specified on the ETA Form 9089 as of the priority date – October 22, 2008. The beneficiary earned a foreign equivalent degree to a U.S. bachelor's degree in accounting and had five years of qualifying progressive work experience before the priority date, in conformance with the ETA Form 9089, Parts H.4 and H.10, which are read in combination. The AAO also determines that the petitioner has established its continuing ability to pay the proffered wage from the priority date up to the present. Accordingly, the petition is approved under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), for classification of the beneficiary as an advanced degree professional.

The burden of proof in these proceedings rests solely with the petitioner. See Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.